S.B. Civil Misc. Appeal No.865/2003
Nand Lal & Anr.
vs
Kana @ Kanhya Lal & Ors

DATE OF ORDER : - 5.8.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr.Manish Pitaliya, for the appellants.
Mr.Usman Gani]
Mr.TR Singh Soda], for the respondents.

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Heard learned counsel for the parties.

The appellants are aggrieved against the award dated 2nd April, 2003 by which appellants' claim petition was dismissed by the Motor Accident Claims Tribunal, Bhilwara as no evidence was produced by the claimants.

According to learned counsel for the appellants, the appellants never instructed their counsel to close evidence, but it appears that case was fixed for evidence of the claimants on 26th May, 2003, but office clerk in pursuance of the tribunal's order dated 17.2.2003 placed the case file before the learned Presiding Officer of the Tribunal and, who finding that the date given in the claim case is 16th May, 2003, which requires to be preponed, therefore, fixed the date 2nd April, 2003

and directed to issue notice to the counsel for the parties. On 2nd April, 2003, as per the order-sheet, the appellants-claimants' advocate closed the evidence of the claimants and the non-applicants also did not produce the evidence and on the same day as per the order-sheet, arguments were heard and claim petition was dismissed and the tribunal ordered that the amount, which was deposited in pursuance of the application under Section 140 of the Motor Vehicles Act awarding interim compensation be recovered from the claimants.

It is clear from the facts mentioned above itself that the date in the claim petition was fixed by the tribunal as 26th May, 2003 and it was preponed without the notice to the claimants and notices were only upon the advocate to appear on 2nd April, 2003, therefore, there is possibility that the appellants had no knowledge of the date dated 2nd April, 2003 and, therefore, the evidence was closed.

In view of the above, the order dated 2nd April, 2003 closing the evidence of the claimants cannot be sustained and deserves to be set aside, hence, set aside. Consequently, the award dated 2nd April, 2003 also goes and it has been passed without giving opportunity to the claimants to produce evidence in the claim case.

Therefore, the appeal of the appellant is allowed and the

impugned award dated 2nd April,2003 closing the evidence of the claimants is set aside. The matter is remanded back to the Motor Accident Claims Tribunal, Bhilwara. Both the parties are directed to remain present in the court at Bhilwara on 1st Sept., 2005. The tribunal shall decide the claim petition afresh after giving opportunity of hearing to all the parties.

(Prakash Tatia), J.

c.p.goyal/-